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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/722,550	09/27/96	MILLER R	128/53

21M1/0307

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EXAMINER	
PELHAM, D	

ART UNIT	PAPER NUMBER
2106	4

DATE MAILED: 03/07/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
08/722,550	Miller et al
Examiner	**Group Art Unit**
Joseph Pelham	2106

☐ Responsive to communication(s) filed on _____ .

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *14 and 17* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *14 and 17* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. Claim 17 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 5,560,952. This is a double patenting rejection.

2. Claims 14 and 17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 5,560,952. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of Applicants' US5,560,952 discloses all of the subject matter of claim 14 of the instant application, adding only the explicit recitation of not recirculating cooking vapors. Claim 14 differs from '952 in explicitly calling for hot air to impinge on the object to be cooked from both the top and bottom. However, while '952 recites only top impingement, "two impinging steps" are recited apart from the single "steam...introducing step", and are disclosed in the specification at column 6, lines 12-21, which implies that the lower air impingement was unintentionally deleted from '952. In any case, lower air impingement would have been an obvious and minor variation of '952 suggested according to the kind of food being cooked.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,297,942 to Benson et al in view of U.S. Patent 4,701,340 to Bratton et al.

Referring to Figure 1 and column 6, line 24, through column 7, line 15, Benson et al discloses all of the recited subject matter except a plurality of cooking phases generating cooking vapors following flame treatment, as recited in claim 17, or the phases each comprising the application of steam and hot air. Benson et al does disclose general subsequent cooking treatments.

Referring to Figure 2 and column 7, lines 16-61, Bratton et al discloses the application of steam and hot air to foods cooked in conveyor ovens. It would have been obvious to adapt the steam and hot air treatment of Bratton et al as the subsequent cooking steps disclosed in Benson et al, or a plurality of steam and hot air treatments, since such would be dictated by the kind of food being cooked. Merely reduplicating the treatment steps of Bratton et al when implementing the oven would have been well within the ordinary level of skill in the art. Moreover, the cooking vapors would necessarily increase in speed as they accumulated along the direction of food movement.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited below should be both separately considered and considered in conjunction with the previously cited prior art when responding to this action.

U.S. Patents Re. 33,374 to Bhattacharjee, 3,604,336 to Straub et al, 3,943,910 and 4,055,677 to White, and 4,867,051 to Schalk all disclose direct flame treatment of foods. U.S. Patent 3,815,488 to van Dyk discloses steam treatment.

6. Any inquiry regarding communications from the Examiner should be directed to Joseph Pelham at (703) 308-1709 or fax 305-3432.

J. Pelham
February 28, 1997

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